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EX PARTE OR LATE FILED

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January 30, 1998

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 200
Washington, D.C. 20554

EX PARTE

Re: Petition of US West Communications for Declaratory Ruling Regarding the Provision of National Directory Assistance, CC Docket No. 97-172

Dear Ms. Salas:

This letter responds to a letter AT&T initially filed in the above-referenced proceeding on December 17, 1997, ("AT&T Letter") and that MCI formally included in the record of this proceeding in a subsequent January 7, 1998, *ex parte* filing.[1] Grossly mischaracterizing snippets from a joint filing by BellSouth and US West in another proceeding, AT&T suggests that BellSouth and US West have "conceded that the MFJ's interLATA prohibition and Section 271's in-region interLATA restrictions are coextensive," AT&T Letter at 2, and have thereby undermined their opposite contention in the instant proceeding. BellSouth, however, has conceded nothing of the sort, and the excerpts relied upon by AT&T do not support the assertion it makes.

Both BellSouth and US West have asserted and shown in this proceeding that Section 271's in-region interLATA prohibition is narrower than the interexchange restriction imposed by the MFJ. The correctness of this proposition is perhaps most evident by the exception of incidental interLATA services (as defined in Section 271(g)) from the proscriptive reach of

[1] MCI also entered the AT&T Letter in the record of two complaint proceedings to which BellSouth is not a party. MCI apparently refiled the AT&T Letter in this proceeding to overcome AT&T's failure to properly "label[ ] or caption[ ] [the submission] as an *ex parte* presentation," as is required by the Commission's rules. 47 C.F.R. § 1.1206(a)(1). Notably, too, MCI submitted the AT&T filing as "supplemental information" -- a less than ringing endorsement -- in likely recognition of the tenuous nature of the claims made therein.

Section 271, for which there was no comparable exception under the MFJ. Additional differences in the comparative scope of the two sources of interLATA proscriptions are derived from differences in the definitional structures underlying those prohibitions. This was the specific point being made by US West and BellSouth in the instant proceeding.

US West's and BellSouth's joint opening brief to the D.C. Circuit in *BellSouth vs. FCC*[2] in no way contradicts that position, for the brief makes no claim whatsoever that the interLATA restrictions of the Act square on all fours with the prohibitions of the MFJ. AT&T's claim otherwise rests on two passages it cites from the joint brief. As quoted by AT&T, those are that "[T]he 'Special Provisions' of 47 U.S.C. §§ 271-273 and 275...essentially codify the decree's prohibition on BOC provision of long-distance services," and that "Congress simply...cop[ied] the judicial decree and paste[d] it into the statute books...."[3] Contrary to AT&T's characterization, however, neither of these passages represents an "unequivocal statement[ ]" of a "revised view" of the scope of Section 271.

Indeed, in the first passage, the word "essentially" is itself a qualification on the assertion describing the consequence of the adoption of the special provisions. As used, the word "essentially" qualifies the remainder of the passage to connote that while the Act codified the decree's core prohibition on BOC provision of long distance services, there were differences between the Act and the decree that were not important to the matter being addressed in the brief.

Nor does the second passage support AT&T's proposition. The joint brief did not "argue" that Congress copied the decree and pasted it into the Act, as AT&T asserts the brief did. AT&T Letter at 2. Rather, the quoted passage was in response to the government's own characterization of the special provisions as "revamp[ing] th[e] framework [of the decree] and mov[ing] it from the judicial and executive realm to the legislative realm."[4] Thus, the brief was responding to the government's claim that action by Congress merely moving the decree "from the judicial and executive realm to the legislative realm" would excuse the action from a bill of attainder claim. The brief's metaphorical paraphrasing of the government's own claim was in no way presented as a comprehensive comparison of the precise parameters of the prior judicial decree and the enacted legislation.

In sum, AT&T's twisted reading of the joint brief has led it to perceive a contradiction in position where none exists. As shown above, the joint brief in no way undermines BellSouth's

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[2] *BellSouth v. FCC*, No. 97-1113 (D.C. Cir.), Joint Brief of Petitioner BellSouth Corporation and Intervenor US West, Inc. (filed October 31, 1997) ("Joint Brief").

[3] AT&T's Letter at 1-2, citing Joint Brief at 29, 30.

[4] Joint Brief at 30, *quoting* Government's Memorandum in Support of Its Cross-Motion for Summary Judgment, *SBC Communications, Inc. v. FCC*, Civil No. 7-97-CV-163-X (N.D. Tex), at 6 (filed Sept. 23, 1997).

and US West's position that National Directory Assistance Service is a permitted offering under the Act.

Sincerely,

A. Kirven Gilbert III

AKG/dwt
cc: Mr. Robert B. McKenna
Mr. James H. Bolin, Jr.
Mr. R. Dale Dixon
Mr. Frank Michael Panek